Supreme Court, U.S.
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No.

In the Supreme Court of the United States

M2 SOFTWARE, INC.,
Petitioner,

v.

MADACY ENTERTAINMENT, *et al,*
Respondents

M2 SOFTWARE, INC.,
Petitioner,

v.

M2 COMMUNICATIONS, LLC, *et al,*
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether this Court should resolve the conflict both within and between circuits – *expressly acknowledged by this Court in a 2003 footnote, but deepened since then by the Ninth Circuit below* – as to whether federal trademark protection extends to protection against a junior use of a senior registrant's trademark that is likely to cause the many forms of confusion of source, sponsorship, approval, affiliation, connection, or other association, *or whether federal trademark protection extends only to protection against a likelihood of direct purchaser mistake as to source.*

RULE 29.6 STATEMENT

Petitioner is M2 Software, Inc. (hereinafter "M2"). Petitioner has no parent corporation and there is no publicly held company owning 10% or more of Petitioner's stock.

Respondents are Madacy Entertainment, Handleman Company, and SFX Entertainment (now Clear Channel Entertainment) [U.S.C.A. No. 03-55957] and M2 Communicãtions, LLC, Gaylord Entertainment, and Jeff Moseley [U.S.C. A. No. 03-56602].

Pursuant to Supreme Court Rule 12.4, a single petition is submitted for the above judgments on the grounds that the judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions.

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Petitioner M2 Software, Inc. (hereinafter "M2"), respectfully petitions this Court for a writ of certiorari to review the judgments of the United States Court of Appeals for the Ninth Circuit in these cases.

OPINIONS BELOW

The opinion of the Ninth Circuit in *M2 Software, Inc. v. Madacy Entertainment, et al* (U.S.C.A. 03-55957) (hereinafter "*Madacy*") is reported at 421 F.3d 1073. The *Madacy* opinion received from the Ninth Circuit is reproduced in the Appendix hereto ("App.") at 1a. The opinion of the Ninth Circuit in *M2 Software, Inc. v. M2 Communications, et al* (U.S.C.A. 03-56602) (hereinafter "*M2 Communications*") is not reported, but is available at 149 Fed.Appx. 612. The memorandum opinion received from the Ninth Circuit is reproduced in the Appendix hereto at App. 29a. The January 8, 2002 opinion of the District Court for the Central District of California in *Madacy* is not reported and is reproduced at App. 35a. The August 1, 2003 opinion of the District Court in *M2 Communications* is reported at 281 F.Supp.2d 1166 and reproduced at App. 62a.

JURISDICTION

The judgment of the Ninth Circuit in *Madacy* was entered on August 31, 2005, followed thirteen days later by its judgment in *M2 Communications* on September 12, 2005. The orders denying M2 Software's petitions for rehearing en banc were entered on November 1, 2005 and November 2, 2005 in *M2 Communications* and *Madacy* respectively. App. 85a, 86a. The jurisdiction of the Ninth Circuit was based on 28 U.S.C. §§ 1291 and 1292(a)(1). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The two cases of this Petition involve a determination of the scope of "likelihood of confusion" contemplated by Sections 32 and 43(a) of the Lanham Act. 15 U.S.C. §§ 1114(1) and 1125(a). These statutes are set forth in the Appendix at pages 87a-88a.